In the United States Bankruptcy Court

for the Northern District of Iowa

CONNIE JUNE MEYER	Bankruptcy No. 95-62169-W
Debtor(s).	Chapter 7

ORDER RE: TRUSTEE'S FINAL REPORT AND OBJECTION THERETO

This matter came on for hearing before the undersigned on November 21, 1997 on Trustee's Final Report and objection thereto. Present at the hearing were Trustee Habbo Fokkena, and Attorney Michael Pedersen representing Lesley Meester as Trustee/Agent for Anna Murra. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. sect;157(b)(2)(A) and (O).

STATEMENT OF THE CASE

Trustee proposes to distribute proceeds from savings bonds to creditors and Debtor. Ms. Murra objects that the bonds are not property of the estate and requests the proceeds be returned to her. She asserts that although the bonds were titled in Debtor's name, they were not available to Debtor or to Trustee. Ms. Murra argues that Debtor has no right to possession of the bonds because they were never delivered to her. She asserts the bonds were held in an oral, spendthrift trust.

FINDINGS OF FACT

Anna Murra is the mother of Debtor Connie June Meyer, formerly known as Connie June Garcia. Between December 1977 and January 1979, Ms. Murra purchased twelve $1,000 Series E U.S. Savings Bonds in the name of Connie June Garcia. Ms. Murra kept the bonds in her safety deposit box and did not inform Debtor of the existence of the bonds.

In January 1995, because of her age and health, Ms. Murra removed the bonds from her safety deposit box in anticipation of the possibility that Debtor may need access to the box in the event of Ms. Murra's sickness or death. She did not want Debtor to know the bonds, titled in Debtor's name, existed. For the same reason, Ms. Murra did not want to take the bonds home with her. Ms. Murra is now in a nursing home and may have Alzheimer's disease. She is in her early eighties.

When Ms. Murra removed the bonds from the safety deposit box, she placed them with employees of Peoples Savings Bank to keep in the bank vault. Toni Nederhoff is an insurance agent and employee of the Bank. She testified that Ms. Murra told her that she had concerns about Debtor spending a lot of money. Ms. Murra did not want Debtor to get hold of her money. She told Ms. Nederhoff she wanted to make sure Debtor did not get all the bonds at once. She stated that "when something happens to me, give them to her one at a time." Ms. Murra wanted the Bank to give Debtor the bonds

when Debtor had bills to pay. She never discussed when the Bank was to tell Debtor of the existence of the bonds. She told the Bank that Debtor did not know about the bonds.

All twelve bonds were in Debtor's name alone with her social security number. After Debtor filed her Chapter 7 petition in bankruptcy, the Bank disclosed to Trustee that it was holding the bonds for Ms. Murra but the bonds were titled in Debtor's name. Trustee demanded turnover of the bonds from the Bank and cashed them, receiving $32,490.80 for the bankruptcy estate. Income tax of $2,696 was paid on that amount. According to Trustee's final report, unsecured creditors are receiving 100% on their claims and an additional $11,899.50 will be disbursed to Debtor from the bankruptcy estate.

CONCLUSIONS OF LAW

Federal regulations have the force of law in matters regarding the ownership of U.S. savings bonds. Yiatchos v. Yiatchos, 84 S. Ct. 742, 745 (1964); Hardymon v. Miller, 718 F. Supp. 723, 724 (S.D. Ind. 1989). According to 31 C.F.R. sect;315.5, applicable to Series E savings bonds,

> Savings bonds are issued only in registered form. The registration must express the actual ownership of, and interest in, the bond. The registration is conclusive of ownership, except as provided in sect;315.49.

This regulation is dispositive of all issues regarding ownership and transfer of U.S. savings bonds. In re Pernia, 165 B.R. 581, 582 (Bankr. D. Md. 1994). Section 315.49 states: "A bond may be reissued to correct an error in registration upon appropriate request, supported by satisfactory proof of the error."

Ownership interests in savings bonds are created at purchase and the law of gifts has no application. 31 CFR sect;315.5; Marcum v. Marcum, 377 S.W.2d 62, 64 (Ky. Ct. App. 1964). Government bonds are contracts between the government and the owner with the terms fixed by statutes and regulations. Dubroc v. Eddy, 1997 WL 115409, at *4 (E.D. La. March 18, 1997). A determination of ownership is an issue of contract rather than gift. Marcum, 377 S.W.2d at 64; see United States v. Chandler, 93 S. Ct. 880, 882 (1973) (stating that delivery, accompanied by donative intent, does not affect ownership of savings bonds in the absence of compliance with transfer restrictions in applicable regulations). The regulations limit the ownership which may be contracted for and require that actual ownership be expressed. In re Murray's Estate, 20 N.W.2d 49, 55 (Iowa 1945).

Most of the cases cited above were decided in the context of probate or similar proceedings to determine ownership of savings bonds after an owner or co-owner died. In Pernia, a bankruptcy court determined that savings bonds owned by debtors, husband and wife, were not exempt "entireties property" under Maryland law. 165 B.R. at 582. In In re Hayes, 407 F.2d 1031, 1033 (6th Cir. 1969), the court considered whether a debtor had any interest of value at the date of her bankruptcy petition in savings bonds payable to the debtor or her husband, as co-owners. Under the applicable regulations, a co-owner in possession may cash in the bonds without the consent of the other co-owner. Id.at 1035. At the date of the petition, the debtor did not have possession of the bonds, had not contributed any money to purchase them, and could have been divested of any interest in them by her husband who was in sole possession of the bonds. Id. The court concluded that the debtor's economic interest in the bonds at the date of the petition was nil. Id.at 1036. In that situation, the court found that possession was one of the most important incidents of ownership. Id.at 1035.

In this case, Debtor is the sole owner of the bonds because they are registered in her name only. This is conclusive of the issue of ownership of the bonds. Ms. Murra had sole possession through placing them with the Bank to hold in its vault. She could not cash in the bonds, however, because she was

not registered as a co-owner. Debtor had neither possession nor knowledge of the existence of the bonds. Hayes is instructive on the extent of Debtor's interest as of the date of the bankruptcy petition, but does not control here because Debtor, as the sole registered owner of the bonds, could not be divested of her interest.

Ms. Murra argues that she could have changed the registration on the bonds to bear her name with Debtor as beneficiary. The relevant regulation, 31 C.F.R. sect;315.49, states that a bond may be reissued "to correct an error in registration." This record does not suggest that Ms. Murra made an error when she placed the bonds in Debtor's name or that satisfactory proof of an error exists. In fact, the record supports the opposite conclusion that Ms. Murra accomplished exactly what she desired to accomplish even though there may have been unintended consequences. Ms. Murra cites no authority for her suggestion and the Court declines to assume that Ms. Murra could have changed the registration under this regulation as she suggests.

Ms. Murra also argues that by placing the bonds with the Bank she created an oral spendthrift trust, precluding the Trustee from seizing the bonds as property of Debtor's bankruptcy estate. The bankruptcy estate generally consists of all of the debtor's legal and equitable interests at the time the bankruptcy petition is filed. 11 U.S.C. sect;541(a)(1). This section is a broad provision encompassing all apparent interests of the debtor. In re Peterson, 897 F.2d 935, 936 (8th Cir. 1990). Neither possession nor constructive possession by the debtor is required. In re Pedersen, 155 B.R. 750, 757 (Bankr. S.D. Iowa 1993).

> [H]owever, a debtor's interest in a trust is excluded from the estate if it is restricted from transfer under applicable nonbankruptcy law. Id.at sect;541(c)(2). We can look to state and federal nonbankruptcy law in determining whether property is excludable under sect;541(c)(2). Patterson v. Shumate, 112 S. Ct. 2242, 2246-47 (1992).

Drewes v. Schonteich, 31 F.3d 674, 676 (8th Cir. 1994) (concluding that two agreements were spendthrift trusts under applicable state law and excluded from bankruptcy estate).

Iowa law generally recognizes and upholds the validity of spendthrift trusts. In re Lingle, 119 B.R. 672, 674 (Bankr. S.D. Iowa 1990). These are defined as trusts created to maintain a designated beneficiary and to insulate the fund from claims of the beneficiary's creditors. In re Schwartz, 58 B.R. 606, 607 (Bankr. N.D. Iowa 1984). A trust having a valid restraint on the voluntary and involuntary transfer of the beneficiary's interest is a spendthrift trust. In re Tone's Estates, 39 N.W.2d 401, 407 (Iowa 1949).

A trust is created by the transfer inter vivos by the owner of property to another person as trustee for a third person. State v. Caslavka, 531 N.W.2d 102, 105 (Iowa 1995). A formal written declaration is not necessarily essential to establish a trust. Butler v. Butler, 114 N.W.2d 595, 612 (Iowa 1962). No particular form of words is necessary if there is reasonable certainty as to the property, the objects and the beneficiaries. Heiden v. Cremin, 66 F.2d 943, 948 (8th Cir.), cert. denied, 290 U.S. 687 (1933). A trust in personal property may be established orally but evidence of such a trust must be clear and convincing. Chicago, M. St. P. Ry. Co. V. Des Moines Union Ry. Co., 254 U.S. 196, 208 (1920).

"The facts and circumstances surrounding the transaction, statement of intentions [] of settlors, conduct and actions of the parties, especially the donee, written statements . . . all taken together establish the existence of a trust relationship." Butler, 114 N.W.2d at 612. The court must give primary attention to the language creating the trust and the intent of the settlor expressed therein. In re Estate of Dodge, 281 N.W.2d 447, 451 (Iowa 1979). No trust is created if the settlor does not manifest

an intention to impose enforceable duties upon the transferee. Cox v. Cox, 357 N.W.2d 304, 306 (Iowa 1984).

The Court concludes that Ms. Murra has not established the existence of an oral spendthrift trust by clear and convincing evidence. She placed the bonds, registered in Debtor's name, in the vault at Peoples Savings Bank after discussing her wishes with an insurance agent who was an employee of the Bank. Ms. Murra told the Bank employee to give Debtor possession of the bonds "one at a time if something happened to her". She was concerned that Debtor would spend them all at once. She wanted the Bank to turn the bonds over to Debtor when she had bills to pay.

Based on the record presented, the Court cannot conclude that clear and convincing evidence exists that this transaction created a valid and enforceable restriction on the transfer of the bonds. The bonds were registered solely in Debtor's name. According to Federal regulations, this is conclusive of Debtor's ownership. Although she did not have possession of the bonds at the time of filing her bankruptcy petition, she had sole ownership which could not be divested by anyone. Ms. Murra is not now entitled to the funds resulting from redemption of the bonds because she was not a registered owner.

Ms. Murra did not express an intent to insulate the funds from Debtor's creditors. To the contrary, she directed the Bank to disburse the bonds when Debtor had bills to pay. Rather than restricting the funds from creditors, Ms. Murra appeared merely to intend to restrict the funds from Debtor's indiscriminate spending contrary to her responsibilities to pay creditors. Ms. Murra did not and, under the legal principles set out in this opinion, could not regain ownership of these funds. Her intent was to pay her daughter's creditors in a responsible manner. This is precisely what the Trustee proposes.

A second requirement of a spendthrift trust which is not met in this case is the requirement that the settlor manifest an intention to impose enforceable duties upon the transferee. Cox v. Cox, 357 N.W.2d 304, 306 (Iowa 1984). The discussion held between Ms. Murra and Ms. Nederhoff more closely resembles a request than the imposition of specific duties. While the record does not completely present Ms. Nederhoff's view of this transaction, it is fair to conclude, based upon this record, that she did not knowingly assume all of the responsibilities and duties associated with a trust because of her conversation with Ms. Murra. As a minimum, this Court concludes that Ms. Murra has not established by clear and convincing evidence that there was mutual consent and mutual intention between Ms. Murra and Ms. Nederhoff to create a trust in which enforceable fiduciary duties were assumed by Ms. Nederhoff.

Therefore, for the reasons set out herein, the Trustee correctly demanded turnover of the bonds which constitute property of the estate. Trustee's Final Report and Proposed Distribution should be approved.

WHEREFORE, Objection to Trustee's Final Report filed by Lesley Meester as Trustee/Agent for Anna Murra is OVERRULED.

FURTHER, the proceeds from the Series E U.S. Savings Bonds are property of the bankruptcy estate.

FURTHER, Trustee's Final Report and Proposed Distribution is APPROVED.

SO ORDERED this 23 day of January, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge